

GOVERNMENT PROPOSED JURY INST. NO. 145

False Withholding Allowance Certificate (Form W-4)

Offense Charged -- False No. of Allowances

The [*information*] or [*indictment*] sets forth \_\_\_\_ counts or charges.

Count I charges that the defendant, [*Defendant's Name*], a resident of [*City*], [*State*], who during the calendar year 19\_ was employed by [*Name of Employer*], a resident of [*City*], [*State*], and who was required under the Internal Revenue laws to furnish [*Name of Employer*] with a signed Employee's Withholding Allowance Certificate, Form W-4, setting forth the number of withholding allowances claimed on or about the date of the commencement of employment by [*Name of Employer*], did willfully supply a false and fraudulent Employee's Withholding Allowance Certificate, Form W-4, to [*Name of Employer*], on which he [she] claimed \_\_\_\_ withholding allowances, whereas, as the defendant then and there well knew and believed, he [she] [*was not entitled to claim withholding allowances*] **1** or [*was entitled to claim only* \_\_\_\_ *withholding allowances*]. **1**

Count II charges that \* \* \* .

All in violation of Title 26, United States Code, Section 7205.

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26 U.S.C. § 7205

**NOTE**

**1** The government does not have to prove the number of [*allowances*] [*exemptions*] to which the defendant was entitled. *United States v. McDonough*, 603 F.2d 19, 24 (7th Cir. 1979).

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Statute Defining Offense

The Internal Revenue Code provides, in part, as follows:

On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

26 U.S.C. § 3402(f)(2)(A)

Section 7205 of the Internal Revenue Code provides, in part, as follows:

Any individual required to supply information to his employer under Section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under Section 3402, shall \* \* \* [*be guilty of an offense against the laws of the United States*].

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Elements of Offense

To establish a violation of Section 7205 of the Internal Revenue Code, the government must prove beyond a reasonable doubt that:

1. The defendant was required to furnish an employer with a signed withholding exemption certificate, Form W-4, certifying information as to the defendant's tax liability and withholding tax allowances;
2. The defendant did furnish his [her] employer with a signed withholding exemption certificate, Form W-4 [*or failed to supply the employer with a signed withholding exemption certificate*];
3. The information supplied by the defendant was false or fraudulent; and
4. The defendant acted willfully.

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26 U.S.C. § 7205

*United States v. Bass*, 784 F.2d 1282, 1284 (5th Cir. 1986)

*United States v. Herzog*, 632 F.2d 469, 471-472 (5th Cir. 1980)

*United States v. Olson*, 576 F.2d 1267, 1271 (8th Cir.), *cert. denied*, 439 U.S. 896 (1978)

GOVERNMENT PROPOSED JURY INST. NO. 148Withholding Allowances

The law requires an employee to complete an Employee's Withholding Allowance Certificate, Form W-4, so that an employer can withhold Federal income tax from an employee's pay.

Employee's Withholding Allowance Certificate, Form W-4, requires an employee to certify the total number of allowances claimed. For purposes of this case you are instructed that if you find that the defendant was an employee, then the defendant was entitled to claim [*set forth applicable allowances based on the evidence, e.g., one allowance for himself [herself], one allowance for his [her] spouse, one allowance for each dependent, etc.* ] **1**

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26 U.S.C. § 3402(f)

26 C.F.R. § 31.3402(f)(1)-1 (1993)

**NOTE**

**1** Reference should be made to 26 C.F.R. § 3402(f)(1) and a determination made as to which withholding allowances are applicable based on the evidence in the case.

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Exempt Status

An exemption from withholding may be claimed by an employee on his [her] Employee's Withholding Allowance Certificate, Form W-4, only if the employee:

- (1) incurred no liability for income tax for the preceding taxable year; *and*
- (2) anticipates that he will incur no liability for income tax for the current taxable year.

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26 U.S.C. § 3402(n)

26 C.F.R. § 31.3402(n)-1

GOVERNMENT PROPOSED JURY INST. NO. 150Withholding Allowances (Exempt Status)

***Withholding Allowances.*** The indictment charges that the defendant submitted false and fraudulent Employee's Withholding Allowance Certificates, Forms W-4, to his [her] employer. In this regard, I charge you that all employees are required by law and regulations to furnish their employer with a signed Employee's Withholding Allowance Certificate, Form W-4, on or before the date of commencement of employment with that employer, indicating the number of withholding allowances which the employee claims. The number of allowances claimed on the Form W-4 may not exceed the number to which the individual is entitled.

A Form W-4 is false and fraudulent if it was used to supply false or fraudulent information regarding the appropriate number of allowances. Thus, if you find that the defendant submitted a Form W-4 to his [her] employer, claiming more allowances than those to which the defendant was entitled by law, then the defendant has filed a false and fraudulent Form W-4.

***Exempt Status.*** Under some circumstances, an individual is entitled to claim total exemption from the withholding of Federal taxes.

To properly claim exempt status, however, the individual must certify in a Form W-4 that no Federal income tax was owed for the tax year prior to the filing of the Form W-4, and that the individual does not expect to owe any Federal income tax for the year of the filing the Form W-4. Thus, if you find that the defendant did owe income tax for the calendar year ***preceding*** the year in which the defendant filed a Form W-4 claiming exempt status, or that the defendant did expect to owe an income tax for the calendar year in which the defendant filed the Form W-4, then you may find that the Form W-4 on which the defendant claimed exempt status was false and fraudulent.

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26 U.S.C. §§ 3402, 7205

*United States v. Grumka*, 728 F.2d 794, 797 (6th Cir. 1984)

*United States v. Annunziato*, 643 F.2d 676, 677 (9th Cir. 1981)

**July 1994**

**26 U.S.C. § 7205**

*United States v. Shields*, 642 F.2d 230, 231 (8th Cir. 1981)

*United States v. Herzog*, 632 F.2d 469, 473 (5th Cir. 1980)

GOVERNMENT PROPOSED JURY INST. NO. 152False or Fraudulent

The government charges that the information supplied by the defendant in the Form W-4, filed with his [her] employer was false and fraudulent in that the defendant reported that he [she] was entitled to [*exempt status*] or [*number claimed allowances*].

Information is false if it was untrue when made and was then known to be untrue by the person then supplying the information or causing such information to be supplied. Information is fraudulent if it is supplied or caused to be supplied with the intent to deceive.

It is sufficient if the evidence establishes beyond a reasonable doubt that the information supplied by the defendant in the Form W-4 furnished to his [her] employer was either false or fraudulent. The evidence need not establish that it was both false and fraudulent.

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Devitt, Blackmar, Wolff and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1992), Sections 16.06 (False -- Defined); 16.08 (Fraudulent -- Defined); 28.04 (modified)

*United States v. Buttorff*, 572 F.2d 619, 625 (8th Cir.), *cert. denied*, 437 U.S. 906 (1978)

*United States v. Peterson*, 548 F.2d 279, 280 (9th Cir. 1977)

*United States v. Smith*, 484 F.2d 8, 10 (10th Cir. 1973), *cert. denied*, 415 U.S. 978 (1974)



GOVERNMENT PROPOSED JURY INST. NO. 153Willfulness -- Section 7205

To find the defendant guilty of violating Section 7205, you must not only find that the defendant did the acts of which the defendant stands charged, but you must also find that the acts were done willfully by the defendant.

The word "willfully," as used in this statute, means a voluntary, intentional violation of a known legal duty. In other words, the defendant must have acted voluntarily and intentionally and with the specific intent to do something he [she] knew the law prohibits, that is to say, with intent either to disobey or to disregard the law.

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Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.20 (modified)

*Cheek v. United States*, 498 U.S. 192, 201 (1991)

*United States v. Bishop*, 412 U.S. 346, 360 (1973)

*United States v. Pomponio*, 429 U.S. 10, 12 (1976)

**COMMENTS**

**1** It is not necessary to define the term "willfully" in a tax case in terms of "bad purpose" or "evil motive." *United States v. Pomponio*, 429 U.S. 10, 12 (1976). *See also* Section 8.06[1], *supra*.

**2** Willfulness has the same meaning in the felony and misdemeanor sections of the Internal Revenue Code. *United States v. Pomponio*, 429 U.S. 10, 12 (1976).

**3** *See also* instructions on willfulness set forth as a part of the instructions on 26 U.S.C. § 7201, *supra*.

GOVERNMENT PROPOSED JURY INST. NO. 154

Knowledge Of Contents Of Form W-4

If you find beyond a reasonable doubt from the evidence in the case that the defendant signed and submitted a Form W-4, then you may draw the inference and find that the defendant had knowledge of the contents of the Form W-4.

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Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 35.14 (modified)

*United States v. Ruffin*, 575 F.2d 346, 354 (2d Cir. 1978)